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confessed judgment, to reimburse him by working for him upon terms approved by the court, and that upon a breach of the contract of service, the convict should be liable to rearrest; a new prosecution and a new fine for the breach. *Held*, the statute is unconstitutional, since its operation results in a condition of peonage forbidden by the Federal Statutes. *United States v. Reynolds*, 35 Sup. Ct. 86. See NOTES, p. 385.

**CONTEMPT—WHAT CONSTITUTES CONTEMPT.**—The defendant, who was not an officer of the court, did acts in furtherance of a conspiracy to bring a baseless suit. He did not bring the suit, nor do any thing after suit was brought. The suit was dismissed before trial. *Held*, the defendant is not guilty of contempt. *Melton v. Commonwealth* (Ky.), 170 S. W. 37.

Direct contempt is some objectionable or disturbing act committed in the presence of the court. See *Ferriman v. People*, 128 Ill. App. 230; *Neely v. State*, 98 Miss. 816, 54 South. 315, 33 L. R. A. (N. S.) 138, 27 Ann. Cas. 281. Constructive contempt is some act not done in the presence of the court, but which tends to obstruct the administration of justice or bring the court into disrespect. See *In re Dill*, 32 Kan. 668, 5 Pac. 39, 49 Am. Rep. 505; *Ex parte Clark*, 208 Mo. 121, 106 S. W. 990, 15 L. R. A. (N. S.) 389. The bringing of a fictitious suit is a contempt of court. *Coxe v. Phillips*, Hardw. 237. See *Lord v. Veazie*, 8 How. 251; *Smith v. Junction R. Co.*, 29 Ind. 546. One who carries on a pretended controversy by counsel is guilty of contempt. See *Cleveland v. Chamberlain*, 66 U. S. 419. Publication, even before indictment, of matter tending to prevent a fair trial in a future criminal prosecution has been held to be contempt. *Rex v. Parke*, L. R. 2 K. B. (1903) 432. The defendant's act in the principal case undoubtedly comes within some of the broad definitions of constructive contempt adduced by the courts. But it is the policy of the law not to extend proceedings for constructive contempt to cases not coming within the established rules. See *Haskett v. State*, 51 Ind. 176. This seems due to the fact that the proceeding is a summary one, and that there is no jury trial. The case of *Rex v. Parke*, *supra*, seems to be the only case holding an act done before any judicial proceedings are instituted to be contempt. In that case the defendant had published statements to the effect that one then under arrest for an indictable offense was of bad character and had been guilty of criminal acts in the past. The publication of such matter would seem to be extremely detrimental to a fair trial in a criminal case, and for this reason, the holding in *Rex v. Parke*, *supra*, seems eminently sound, but it would appear to rest upon its own peculiar facts, and not to be authority for extending its doctrine beyond cases of that class.

**CORPORATION—STATUTORY LIABILITY OF STOCKHOLDERS—SUBROGATION.**—A State Constitutional provision made stockholders in banks liable to depositors for a sum equal in amount to their stock, over and above the par value of the same. A bank failed, and the stockholders were compelled to make payments to the depositors under the above provi-

sion. Further assets of the bank were then discovered, and the stockholders claimed to be subrogated to the depositors' right to share these assets with the general creditors. *Held*, the stockholders should be so subrogated. *Arthur v. Peoples Bank of Union* (S. C.), 83 S. E. 778. See NOTES, p. 373.

**CRIMINAL LAW—FORCIBLE BREAKING.**—The defendant was indicted for forcibly breaking and entering a chicken coop, the door of which was partly open and held in position by bricks and a stick. *Held*, to push the door further open was a sufficient breaking. *Goins v. State* (Ohio), 107 N. E. 335.

An interesting question, long disturbing the courts, is whether there is a sufficient common law breaking where a window or door partially open is pushed further open to make an entry. By the common law rule it was deemed a man's folly and negligence if he left his doors and windows open and one entering under such circumstances was not guilty of burglary. 4 BLACKSTONE, COMM., 15 Ed. 226. Extending this doctrine, the English cases hold that where a man leaves his doors or windows partially open to open them further to permit ingress is not sufficient breaking to support an indictment for burglary. *Rex v. Smith*, 1 Moody C. C. 178.. See *Rex v. Hyams*, 7 Car. & P. 441. This rule finds favor with the Massachusetts authorities. *Commonwealth v. Steward* (Mass.), 7 Dane Abr. 136; *Commonwealth v. Hages*, Id.; *Commonwealth v. Strupney*, 105 Mass. 588, 7 Am. Rep. 556. And this was deemed established law for a number of years in this country. BISHOP, STATUTORY CRIMES, 2 Ed., § 312. Contributory negligence, while available as a defense in an action of tort, should be no defense to a prosecution for burglary as the latter is a crime against the state. There is a tendency to depart from the old construction and to hold that pushing a door or window further open is a forcible breaking. *State v. Lapoint* (Vt.), 88 Atl. 523; *State v. Sorenson* (Ia.), 138 N. W. 411; *People v. White*, 153 Mich. 617, 117 N. W. 161, 17 L. R. A. (N. S.) 1102, 15 Ann. Cas. 927. *Contra*, *Rose v. Commonwealth*, 19 Ky. Law Rep. 272, 40 S. W. 245. It is settled that to open a door or window completely shut, but not fastened in any way, is breaking. *Rex v. Hyams*, *supra*; *State v. Reid*, 20 Iowa 413; *Sparks v. State*, 34 Tex. Cr. Rep. 86, 29 S. W. 264. It is a useless refinement to hold that opening a closed door which is not fastened in any manner is a breaking, while to open further one that is partially open is not a breaking, as the force used in the two cases of either class is of the same character and degree, differing only in the continuance of the effort. *State v. Lapoint*, *supra*; *Claiborne v. State*, 113 Tenn. 261, 83 S. W. 352, 106 Am. St. Rep. 833, 68 L. R. A. 859.

**DEATH BY WRONGFUL ACT—NECESSARY ALLEGATIONS AS TO BENEFICIARIES UNDER STATUTES.**—Deceased was killed through defendant's negligence, and his administrator sued under the Missouri statute for damages for his wrongful death. The petition alleged that the deceased, at the time of his death, "was an unmarried adult person without minor child or children, natural born or adopted." There was no allegation that